RECORD, CASE NO. 14026.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No. 341.

THE UNITED STATES, APPELLANT,

vs.

ROBERT BARBER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

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1 At a district court of the United States for the middle district of of Alabama, begun and holden at Montgomery, Alabama, on the first Monday in November, 1888, it being the fifth day of said month: Present: The honorable John Bruce, judge of the district courts of the United States for the northern and middle districts of Alabama, sitting and presiding as such district judge, on Friday, January 25th, 1889, it being a day of said court, the following proceedings were had:

In the district court of the United States for the middle district of Alabama.

No. 362.—Petition.

ROBERT BARBER *against* THE UNITED STATES. } No. 362. Filed November 16th, 1888.

To the honorable the district court of the United States in and for the middle district of Alabama and to the judge of said court:

Your petitioner, Robert Barber, a citizen of the United States and resident of Montgomery County, in the State of Alabama, and in said middle district of Alabama, whose post-office is Montgomery, in said county and State aforesaid, respectfully shows:

That he is a commissioner of the circuit court of the United States for the middle district of Alabama, and that he was such commissioner, duly appointed, qualified, and acting, from the 29th day of December, 1881, to the 15th day of November, 1888, both inclusive; that at divers times
2 during his term of office your petitioner, as such commissioner, performed for and on behalf of, and at the instance and request of, the United States, certain services in the prosecution and in the arresting and holding to bail of persons charged with violating the penal laws of the United States. A schedule of such services is herein set forth. And your petitioner avers that such services were each and all actually and necessarily performed by him as herein stated and charged.

Your petitioner further avers that under and pursuant to the laws of the United States, and especially sections 828 and 847 of the Revised Statutes of the United States, he was and is entitled to receive from and be paid by the defendant the several sums hereinafter set forth for the items of charges for said services performed by him as aforesaid.

And your petitioner further avers that the charges of the several sums due him for above services were included in the account which, as such commissioner, he made against the United States, and which, after having been verified by his oath, was duly presented to the district court of the United States for the middle district of Alabama and was duly approved by said court at Montgomery, as rendered, on the 5th day of November, 1888, as required by law, for four hundred and fifteen dollars ($415.00).

The items of said services and the fees which your petitioner became and was entitled to demand and receive from and to be paid by the defendant therefor are as follows, to wit:

49 cases, making dockets, indexes, etc., at $1.00	$49.00
122 cases, making dockets, indexes, etc., 't $3.00	$366.00
	$415.00

3 And petitioner files in said court on the day hereof an itemized statement of the date, name, item of service, and charge, in each of the cases before him in which such charges are made, as the statement of account or bill of particulars in this suit.

Petitioner has heretofore filed in the circuit court of the United States for said middle district of Alabama the original papers and proceedings, and the certificates and returns required by law to be made by him in all of the cases, and for all of the services in which compensation is claimed in this suit, and will refer to the same, as may become necessary, upon the trial.

The aggregate sum due your petitioner from the United for the services hereinabove enumerated is four hundred and fifteen dollars (415.00).

And petitioner avers that no part of said above claim, demand, and account has been paid to him, nor to anyone for him, nor has any part of the same been allowed to him in any way, as a credit or offset, by any officer or Department of the United States, and that the whole of said sum is now due and unpaid, although payment of the same has been duly demanded and refused, and is hereby demanded. And petitioner further shows that no part of the claim herein sued has been heard and determined, nor has heretofore been rejected or reported on adversely by any court, Department, or commission authorized to hear and determine the same.

And petitioner further shows that no assignment or transfer of said claim or any part thereof has been made by him, and that he is the lawful owner thereof.

4 And petitioner solemnly swears that he will support and defend the Constitution of the United States against all enemies, foreign and domestic; that he will bear true faith and allegiance to the same; that he takes this obligation freely, without any mental reservation or purpose of evasion.

Wherefore your petitioner prays judgment against the defendant for four hundred and fifteen dollars ($415.00), and that this honorable court will order, adjudge, and decree that an account be stated between the parties, and that the sum found due to this petitioner for and on behalf of the services hereinabove enumerated shall be certified and paid to him as provided by law.

ROBERT BARBER,
Petitioner.

GEO. H. PATRICK,
Attorney and Solicitor for Petitioner.

UNITED STATES OF AMERICA, *Middle District of Alabama:*

Before me, Joseph W. Dimmick, clerk of the district court of the United States for the Middle district of Alabama, on the 16th day of November, 1888, at Montgomery, Alabama, in said district, personally appeared Robert Barber, to well me known, who, being by me first duly sworn according to law, deposes and says that he is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that the facts therein stated are true to the best of his knowledge and belief.

J. W. DIMMICK,
Clerk U. S. District Court for the Middle District of Alabama.

Filed November 16th, 1888. J. W. Dimmick, clerk.

5 *Bill of particulars—No. 362.*

The United States of America to Robert Barber, U. S. Commissioner, Dr.

For making docket, indexes, &c., per order of the U. S. circuit court for the middle district of Ala., as per itemized statement hereto attached $415.00

UNITED STATES OF AMERICA,
Middle District of Alabama:

I, Robert Barber, a United States commissioner for the middle district of Alabama, being duly sworn, deposes and say that the fees charged in the foregoing account, amounting to four hundred and fifteen ($415.00) dollars, are just and true as therein stated, and that no part of the same have been received by me, and that the services therein charged have been actually and necessarily performed as therein stated.

ROBERT BARBER,
U. S. Commissioner.

Sworn and subscribed to before me this 1st day of Nov'r, 1888.

BENJ. P. SEALS,
U. S. Cir. Court Comm'r, Mid. Dist. of Ala.

November term, A. D. 1888.—Middle district of Alabama.

In the United States district court for the said district, at a term thereof begun and held at Montgomery, Alabama, on the first Monday in November, A. D. 1888—present and presiding: The honorable John Bruce, judge of said court—a day of said term, the following proceedings were had:

6 In the matter of the accounts of Robert Barber, U. S. commissioner.

Whereas Robert Barber, United States circuit court commissioner in and for the middle district of Alabama, has presented to the court his account for docket fees, &c., from the first day of June, 1888, to the first day of November, 1888, with the items thereof, and in the presence of Geo. H. Moore, esq., U. S. assistant attorney, has proved on oath to the satisfaction of the court the services charged for have been actually and necessarily performed as therein stated; and whereas said charges appeared to be just and according to law, it is therefore ordered by the court that said account, amounting to four hundred and fifteen dollars, be, and the same is hereby, approved.

The above is a true copy from the record of an order made by said court on the fifth day of November, A. D. 1888.

Witness my hand and the seal of said court this 5th day of Nov., A. D. 1888.

[SEAL.]

J. W. DIMMICK,
Clerk U. S. District Court, Middle District of Ala.

Account of fees for making docket indexes, &c., per order of the United States circuit court middle district of Alabama.

Defendants.	Sec. R. S., U. S.	Date of trial or service.	Proceedings.	Fees.
		1888.		
Samuel Lunsford	2461	June.	Issue joined and testimony taken	$3.00
Daniel Carter	"	"	Same	3.00
Hunter Jones	"	"	Same	3.00
Henry Etheridge	"	"	Same	3.00
7		1888.		
Aaron Smith	2461	June.	Same	3.00
Martin Wilson	"	"	Same	3.00
Dennis Sinkfield	"	"	Same	3.00
G. W. Chesser	"	"	Same	3.00
Benj. Franklin	"	"	Same	3.00
Solon May	"	"	Same	3.00
Anthony Feagin	"	"	Same	3.00
Jack Smith	"	"	Same	3.00
Jacob Feagin	"	"	Same	3.00
Henry Feagin, sr	"	"	Same	3.00
Isriel Payne	"	"	Same	3.00
M. J. Coon	5296	"	Discharged from jail, poor convict	1.00
Chas. Langston	5467	"	Warrant returned, def't not found	3.00
D. D. Lee	2461	"	Same	1.00
Jeff. Davis	"	"	Same	1.00
Y. E. Hughes	"	"	Same	1.00
Sam'l Durrell	"	"	Same	1.00
J. Gomillion	"	"	Same	1.00
Jerry Stephens	"	"	Same	1.00
Alfred Watson	"	July 19	Issue joined and testimony taken	3.00
Alfred May	"	" "	" " " " "	3.00
W. G. Watson	"	" "	" " " " "	3.00
I. I. Kilpatrick	"	" 21	" " " " "	3.00
Mark Coxwell	"	" "	" " " " "	3.00
S. P. Davis	"	" "	" " " " "	3.00
Amount carried forward				$73.00
Amount brought forward				$73.00
		1888.		
J. M. Roper	2461	July 21	Issue joined & testimony taken	3.00
Wm. Thompson	"	" "	" " " " "	3.00
J. F. Guthrie	"	July 23	" " " " "	3.00
Jno. T. Merritt	"	" "	" " " " "	3.00
J. S. Martin	"	July 21	" " " " "	3.00
J. H. Beasley	"	" "	" " " " "	3.00
8		1888.		
W. H. Dean	3279	July 24	Issue joined & testimony taken	3.00
John I. Nichols	2461	" 25	" " " " "	3.00
N. A. Beasley	"	" 26	" " " " "	3.00
S. W. Roper	"	" 30	" " " " "	3.00
La Fayette Merritt	"	" "	" " " " "	3.00
Maje Lowe	"	" "	" " " " "	3.00
Jas. McPhearson	"	" "	" " " " "	3.00
J. B. Turner	"	" 26	" " " " "	3.00
Jno. Williams	"	" "	" " " " "	3.00
Joseph Merritt	"	" 30	" " " " "	3.00
John Lane	"	" 31	Returned, def't not found	1.00
Harmon King	"	" "	" " " " "	1.00
Thomas Nix	"	" "	" " " " "	1.00
Jesse Roberts, jr	"	" "	" " " " "	1.00
Benj. Neece	"	" "	" " " " "	1.00
Robert Bradley	"	Aug 3d	Issue joined & testimony taken	3.00
Lewis Holts	"	" 4	" " " " "	3.00
Ed. Jossey	"	" "	" " " " "	3.00
Jno Hardy	"	" "	" " " " "	3.00
Wiley South	"	" "	" " " " "	3.00
Thad. Holts	"	" "	" " " " "	3.00
W. T. Knowles	"	" 10	" " " " "	3.00
C. D. Hart	"	" "	" " " " "	3.00
W. D. Hart	"	" "	" " " " "	3.00
Amount carried forward				$153.00
Amount *carried* forward				$153.00
		1888.		
Frank Feagin	2461	Aug. 10	Issue joined & testimony taken	3.00
Chas. Thompson	"	" "	" " " " "	3.00
Wm. Knowles	"	" "	Bond on capias	1.00
J. W. Hassell	"	" "	" " " " "	1.00
A. McLellan	"	" 11	Issue joined & testimony taken	3.00
Derry Marshal	"	" "	" " " " "	3.00
Derry Marshal	"	" "	" " " " "	3.00

Account of fees for making docket indexes, &c.—Continued.

Defendants.	Sec. R. S., U. S.	Date of trial or service.	Proceedings.	Fees.
9		1888.		
Derry Marshal	2461	Aug. 11	Issue joined & testimony taken	$3.00
Marion Merrett	"	" "	" " " "	3.00
Thos. Marshal	"	" "	" " " "	3.00
A. McLellan	"	" "	" " " "	3.00
S. Feagin, jr	"	" 13	" " " "	3.00
Cuff Kennedy	"	" 15	" " " "	3.00
George Couch	"	" "	" " " "	3.00
Cuff Kennedy	"	" "	" " " "	3.00
Cuff Kennedy	"	" "	" " " "	3.00
Dock Ward	"	" "	" " " "	3.00
Bry. Harrison	"	" "	" " " "	3.00
Geo. Couch	"	" "	" " " "	3.00
W. D. Bryan	5421	" "	" " " "	3.00
W. D. Bryan	"	" "	" " " "	3.00
W. D. Bryan	"	" "	" " " "	3.00
Sidney Hudson	2461	" 17	" " " "	3.00
J. L. Merritt	"	" 18	" " " "	3.00
G. N. Gardner	"	" "	" " " "	3.00
Wm. Parker	"	" "	" " " "	3.00
Jake Jackson	"	" 22	" " " "	3.00
Andy Day	"	" 23	" " " "	3.00
Hut. Harrison	"	" "	" " " "	3.00
Hut. Harrison	"	" "	" " " "	3.00
Amount carried forward				$230.00
Amount brought forward				230.00
		1888.		
Sam'l Cobb	2461	Aug. 23	Issue joined & testimony taken	3.00
Shep. Foster	3279	" 24	" " " "	3.00
And. Hassell	2461	" 27	" " " "	3.00
Walker Diamond	"	" 28	" " " "	3.00
Walker Diamond	"	" "	" " " "	3.00
Walker Diamond	"	" "	" " " "	3.00
Hall Moseley	"	" "	" " " "	3.00
Bill Wright	"	" 31	" " " "	3.00
10		1888.		
Elijah Padgett	2461	Aug. 31	Issue joined & testimony taken	3.00
John Brown	"	" "	" " " "	3.00
John Brown	"	" "	no testimony taken	1.00
John Brown	"	" "	" " " "	1.00
Jas. Lanier	"	" "	Warrant returned, def't n. f.	1.00
Joseph Curry	"	" "	" " " "	1.00
Alex. Bradley	"	" "	" " " "	1.00
Jap Coon	"	" "	" " " "	1.00
Frank Jones	"	" "	" " " "	1.00
A. Watters	"	" "	" " " "	1.00
Harvey Davis		" "	" " " "	1.00
M. D. Beck	"	" "	" " " "	1.00
Jas. Eldridge	"	" "	" " " "	1.00
Lewis Couch	"	" "	" " " "	1.00
J. O. Acree	"	" "	" " " "	1.00
M. J. Coon	"	" "	" " " "	1.00
Zack Sanford	"	" "	" " " "	1.00
Jap Coon	"	" "	" " " "	1.00
Lee Irwin	"	" "	" " " "	1.00
Jasper Coon	"	" "	" " " "	1.00
W. D. Wiggins	"	" "	" " " "	1.00
Wm. Barnes	"	" "	" " " "	1.00
Amount carried forward				$289.00
Amount brought forward				289.00
		1888.		
J. D. Cayton	2461	Aug. 31	Warrant returned, not found	1.00
Jesse Roberts, jr	"	"	" " " "	1.00
John Jossey	"	"	" " " "	1.00
Bud Parker	"	"	" " " "	1.00
Sellers Gantt	"	"	" " " "	1.00
John Lunsford	"	"	" " " "	1.00
Jno. Barfield	"	"	" " " "	1.00
John Howard	"	"	" " " "	1.00
Lane Col	"	"	" " " "	1.00
11		1888.		
Harvey Davis	2461	Aug. 31	Warrant returned not, found	1.00
Rans Cantelon	"	"	" " " "	1.00
Harvey Davis	"	"	" " " "	1.00
Chas. Thomas	"	"	" " " "	1.00
J. A. Prestwood, 2d	"	"	" " " "	1.00
Geo. Alexander	"	"	" " " "	1.00

Account of fees for making docket indexes, &c.—Continued.

Defendants.	Sec. R. S., U. S.	Date of trial or service.	Proceedings.	Fees.
		1888.		
Aaron Smith	2461	Sept. 1	Issue joined & testimony taken	$3.00
J. A. Williams	"	" 6	" " " " "	3.00
D. G. Palaski	"	" 8	" " " " "	3.00
D. L. Watson	"	" 11	" " " " "	3.00
Dan'l Douglass	"	" 12	" " " " "	3.00
Wm. Bradley	"	" "	" " " " "	3.00
Wm. Bradley	"	" "	" " " " "	3.00
Ned Graves	"	" 13	" " " " "	3.00
P. C. Tobias	"	" "	" " " " "	3.00
Lundy McLane	"	" 15	" " " " "	3.00
Thos. Sims	"	" "	" " " " "	3.00
Abe Rose	"	" "	" " " " "	3.00
Jas. Cross	"	" 17	" " " " "	3.00
James Cross	"	" "	" " " " "	3.00
John Bennett	"	" "	" " " " "	3.00
Amount carried forward				349.00
Amount *carried* forward				349.00
Jno. Tilman	2461	Sept. 17	Issue joined, testimony taken	3.00
J. C. Kelsoe	"	" "	" " " "	3.00
Henry Shines	"	" 22	" " " "	3.00
B. J. Majors	"	" "	" " " "	3.00
J. E. Jones	"	" "	" " " "	3.00
J. E. Jones	"	" "	" " " "	3.00
J. E. Jones	"	" "	" " " "	3.00
J. E. Jones	"	" "	" " " "	3.00
Sam'l Hester	"	Oct. 15	" " " "	3.00
Elijah Cox	"	" "	" " " "	3.00
12 Jas. Merritt	2461	Oct. 15	Issue joined, testimony taken	3.00
Will Crenshaw	"	" "	" " " "	3.00
Henry Shines	"	" "	" " " "	3.00
Dan'l Whittle	"	" 18	" " " "	3.00
J. D. Fowler	"	" "	" " " "	3.00
J. F. McKinney	"	" "	" " " "	3.00
Gabe Sexton	"	" "	" " " "	3.00
Jno. Henderson	"	" 20	" " " "	3.00
Jno. J. Jackson	"	" "	" " " "	3.00
R. E. Burkett	"	" 22	" " " "	3.00
W. L. Walker	"	" "	" " " "	3.00
				412.00
Wm. Phillipps	3279	Oct. 31, '88	" " " "	3.00
			Total	$415.00

Filed November 15, 1888. J. W. Dimmick, clerk.

No. 362.—Demurrer of defendants.

ROBERT BARBER
vs.
THE UNITED STATES. } No. 362.

In the district court of the United States for the middle district of Alabama.

Now comes Geo. F. Moore, assistant U. S. attorney, who appears on behalf of the defendant and demurs to the petition in the above entitled cause, and for grounds thereof assigns the following:

1. That the said petition shows on its face that the claim for services rendered by the petitioner as a United States circuit court commissioner is for making dockets and indexes and is unauthorized by law.

2. That the said petition shows that the services for which compensation is sought are not proper charges against the United States.

13

GEO. F. MOORE,
Asst. U. S. Atty.

Petitioner joins in demurrer.

GEO. H. PATRICK,
Att'y & Sol'r for Pet'r.

Filed Nov. 22, 1888. J. W. Dimmick, clerk.

No. 362.—Proof of service.

[Front.]

Registry return receipt sent Nov. 23, 1888.

Reg. No. 681. From post-office at Montgomery, Ala.

*Reg. Letter. } Addressed to Hon. A. H.
Reg. Parcel. } Garland.

Post-office at Washington, D. C.

Received the above-described registered { *Letter. / Parcel.

13413
A. H. Garland.
By J. J. Haney.

[Back.]

Post-Office Department.

Official business.

Post-office at

[Washington, A., Nov. 26, 1888, D. C.]

Return to:

Name of sender, Rob't Barber.

Street and number, or post-office box, ...

Post-office at Montgomery, county of Montgomery, State of Alabama.

Registry receipt.

Post-office at Montgomery, Ala.

Registered { Letter. / Parcel. } No. 681. Rec'd Nov. 23, 1888, of Robert Barber, 1 letter addressed to A. H. Garland.

Washington, D. C.
G. C. Clisby, 9 p. m.

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER
against
THE UNITED STATES. } No. 362. Filed November 16th, 1888.

Before me, Joseph W. Dimmick, clerk U. S. district court for the middle district of Alabama, personally appeared Robert Barber, the petitioner in the above-entitled cause, who is well known to me, and who, being duly sworn according to law, on oath says:

"On the 16th day of November, 1888, I served a copy of the
14 petition filed by me against the United States as aforesaid upon William H. Denson, esq're, United States attorney for the northern and middle district of Alabama, by personally delivering to and leaving

with George F. Moore, esquire, assistant U. S. attorney, at the U. S. attorney's office, in the Government building in the city of Montgomery, Alabama, a true, full, and complete copy thereof.

"On the 23d day of November, 1888, I personally mailed a copy of said petition, filed herein as aforesaid, by registered letter, to the Attorney-General of the United States, at Washington, D. C., and I attach hereto the original receipt for said letter of the postmaster at Montgomery, Alabama, the place where said letter was mailed, bearing even date therewith, together with the registry return receipt for said letter signed for the said Attorney-General at the post-office at Washington, D. C., and remailed to affiant on the 26th day of November, 1888."

"And further he saith not.

"ROBERT BARBER,
"*Petitioner.*"

Sworn to and subscribed to before me, at Montgomery, Alabama, on this 30th day of November, 1888, by Robert Barber, to me well known.

J. W. DIMMICK,
Clerk U. S. District Court for the Middle District of Alabama.

Filed November 30, 1888. J. W. Dimmick, clerk.

Findings of fact and conclusion of law.

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER *against* THE UNITED STATES. } No. 362. Filed November 16th, 1888.

15 This case came on to be heard before the district court of the United States for the middle district of Alabama, the honorable John Bruce, U. S. district judge, presiding, and due and legal proof of service upon the defendant as required by laws having been made and filed herein, the defendant, by George F. Moore, esquire, assistant attorney of the United States for said district, appeared and demurred in writing to the petition in said cause, as is shown by the record thereof, and said demurrer was argued by counsel, and being understood by the court, it was considered that the same be, and it was, in all things overruled and denied. And the defendant making no further or other defence as to the actual performance of the services as charged, the petitioner introduced evidence in support of the allegations of said petition, to wit, his own testimony under oath, and the original records and files and accounts of the matters embraced in this suit; and his witnesses and proofs were further examined by the said attorney of the United States and by the court, and the said accounts, claims, and demands sued upon having been established by proof satisfactory to the court upon the evidence, the court, without a jury, finds the facts to be as follows:

Findings of fact.

I. The petitioner was a commissioner of the circuit court of the United States for the middle district of Alabama from December 29th, 1881, to November 16th, 1888, inclusive, duly appointed, qualified, and acting.

II. By an order of said circuit court, made and entered at Montgomery, on the 1st day of October, 1881, in compliance with the request of the Attorney-General of the United States, commissioners were re-
16 quired to keep a docket, in which should be entered on the day the transaction occurred the fact of the issuing of each warrant, the name of the person upon whose complaint and request the same was issued, the nature of the offense, and the name of the officer to whom the warrant was delivered for service, together with the proceedings had under said warrant, the names of the witnesses present and examined and their fees, the names of the guards, if any, and their fees, and the fees, mileage, and expenses of the marshal, deputy marshals, commissioners, etc., and other matters of information and record; and said order was continued of force during the period covered by this suit. By section 4234 [759, 4698] of the code of Alabama justices of the peace were and are required to keep dockets of all criminal cases tried, which should set forth the nature of each case, the judgment rendered therein, an itemized copy of the bills of costs, etc. The petitioner kept such docket in proper manner and form during all of the period embraced in this suit, to wit, during the years 1887 and 1888.

III. From June 1st to October 31st, 1888, inclusive, petitioner, as such commissioner, issued, examined, and disposed of warrants upon complaints before him in 49 cases in which no issue was joined nor testimony taken at $1.00, $49.00; 122 cases in which issue was joined and testimony taken at $3.00, $366.00; and he duly made proper docket entries and indexes and taxed the costs as required by law and the rules of court in each and all of the cases named in this finding.

IV. The petitioner duly made out, and verified by his oath, his
17 accounts of fees for keeping said dockets and making indexes thereto, etc., and delivered the same to the United States attorney for said district, by whom they were duly submitted to the proper district court of the United States for Alabama, and duly approved by said court as rendered, for the amounts respectively claimed therein and in this suit.

V. The said accounts were not presented to the accounting officers of the Treasury, but similar accounts for prior periods were and had been presented to and disallowed by said accounting officers.

Conclusion of law.

Upon the foregoing facts the court finds, as conclusion of law, that the petitioner is entitled to recover of the defendant the sum of four hundred and fifteen dollars ($415.00).

By the court:

JOHN BRUCE,
Judge U. S. District Courts for the Northern and Middle Districts of Alabama.

In open court, at Montgomery, Alabama, January 25th, 1889.
Filed January 25th, 1889. J. W. Dimmick, clerk.